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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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MARK YOUNG, P.A. 12086 FORT CAROLINE ROAD UNIT 202 JACKSONVILLE, FL 32225			EXAMINER SAINDON, WILLIAM V	
			ART UNIT 3623	PAPER NUMBER
			NOTIFICATION DATE 09/03/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/731,195

Applicant(s)

CRICI ET AL.

Examiner

William V. Saindon

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12, 13, 16-25, 27-38 and 40-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12, 13, 16-25, 27-38 and 40-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The following FINAL Office Action is in response to Applicant's submission received May 17, 2008. Claims 1-10, 12, 13, 16-25, 27-38, and 40-44 have been amended. Claims 11, 14, 15, 26, 39, 45, and 46 have been canceled. No claims have been added. Therefore, claims 1-10, 12, 13, 16-25, 27-38, and 40-44 are pending.

Response to Amendment

2. The objections to the drawings are withdrawn in light of Applicant's amendments to the drawings and claims.
3. The objection to the abstract is withdrawn in light of Applicant's amendment.
4. The objections to the claims are withdrawn in light of Applicant's amendments.
5. The 35 USC § 101 rejection of claims 25-44 and 46 is not withdrawn in light of Applicant's amendments. Please refer to the § 101 rejection below.
6. The 35 USC § 112 ¶ 1 rejection of claims 1-10 and 12-46 as failing to comply with the written description requirement is withdrawn in light of Applicant's amendments cancelling the offending limitations.
7. The 35 USC § 112 ¶ 2 rejection of claim 3 is not withdrawn in light of Applicant's amendments. Please refer to the § 112 ¶ 2 rejection below.
8. Applicant's petition for correcting priority is noted.
9. Applicant's petition for revival from abandonment is noted.

Response to Arguments

10. The objection to the specification regarding the use of "John" and "Johnny" is withdrawn in light of Applicant's argument on the fourth page of remarks.
11. The Examiner would like to note the requirements for traversing official notice from MPEP § 2144.03:

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b).

If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate [emphasis added].

Because Applicant has not specifically pointed out any errors in the Examiner's action, the officially noticed facts in the May 9, 2005 Office Action are deemed admitted prior art.

Claim Rejections - 35 USC § 101

12. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

13. **Claims 1-10, 12, 13, 16-25, 27-38, and 40-44 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.** The steps recited do not qualify as a statutory process. In order for a method to be considered a "process" under §101, a claimed process must either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials). Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972). If neither of these requirements is met by the claim, the method is not a patent eligible process under §101 and is non-statutory subject matter.

The claims are not tied to another statutory class. The steps recited either do not require a particular apparatus (e.g. a particular computer), or only mention a nominal recitation of a computer (e.g. in the preamble). Therefore, the claims are non-statutory.

Claim Rejections - 35 USC § 112

14. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

15. **Claims 3-7, 13, 22, 23, 37, 38, 40, 42, and 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 3: The step of inputting a schedule at a first location in claim 1 is further limited in that a plurality of schedules are inputted at a plurality of locations. Because a plurality of locations is more than one location, claim 3 fails to further limit claim 1.

Claim 13: The stand-by appointments have no antecedent basis in claim 1.

Claim 22: The claim tries to determine if there "may" be conflicts in the schedules. However, the scope of "may" is indefinite because a conflict either exists or it doesn't. If there is some in-between, then this special case should be explicitly claimed. The Examiner cannot ascribe a meaning to this indefinite term.

Claims 37, 38, 40, 42, and 43: Various "steps" for performing an act are claimed, but the specification does not provide a specific enumeration of the steps as required by § 112 ¶ 6. Therefore, the claims are unclear.

The remaining claims are rejected for depending from a rejected claim.

Claim Rejections - 35 USC § 102

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

16. Claims are rejected under 35 U.S.C. 102(a & e) as being anticipated by Waytena et al. (US 5,978,770).

Claim 1: Waytena discloses method of:

inputting a business appointment schedule of at least one service provider at a first location (see col. 9, lines 21-32, col. 10, lines 11 *et seq.*, noting that a schedule of the queues of various rides is kept);

providing access to at least a portion of said service provider's business appointment schedule over the Internet to service receivers at a plurality of locations remote from said first location, where said step of providing access includes visually displaying the service provider's business appointment schedule to the service receivers, said service provider's business appointment schedule including access appointments of said service provider which have been reserved and appointments which have not been reserved (see Figs. 5B and 5C, noting the user's schedule is shown, as well as a way to request appointments. Further note that a user's schedule is part of a provider's schedule);

receiving input from said service receivers, said input including input to schedule appointments and requests for stand-by appointments for appointment times which are already reserved (see id., noting user can request appointments, or stand-by in the queue if the ride is not available); and

updating said service provider's business appointment schedule (see id., noting that when a user requests a time, the provider's schedule reflects such a request).

Claim 2: Waytena discloses visually displaying said service provider's business appointment schedule (see Fig. 5B, item 545, noting that at least a portion of the service providers schedule is displayed).

Claim 3: Waytena discloses inputting a plurality of business appointment schedules of a plurality of service providers at a plurality of remote locations (see id., noting that various ride provider's schedules are listed).

Claims 4-7 are mere recitations of intended use and do not further limit the method steps.

Claim 8: Waytena discloses receiving payment information (see col. 7, line 1, noting payment is received from the service receivers for renting the scheduling equipment).

Claim 12: Waytena discloses notifying any service receiver who requested said already reserved appointment time, if said appointment becomes available (see col. 13, lines 29-33, noting the user is notified when they can go to the ride).

Claim 13: Waytena discloses informing service receivers that requested stand-by appointments are no longer available (see col. 19. lines 20-25, noting that a message is sent if the ride become unavailable).

Claim 16: Waytena discloses receiving input of at least one service receiver's schedule and displaying said service receiver's schedule to said service receiver (see Fig. 5A and 5B, noting the user's schedule is listed).

Claim 17: Waytena discloses indicating to a service receiver that a schedule conflict exists if said service receiver inputs an appointment with a service provider which would conflict with the service receiver's schedule (see col. 23, lines 3-13 and col. 24, lines 38-51, noting the input is verified to make sure no conflicts exist).

Claims 18 and 19: Waytena discloses producing a visible display and an audible signal (see id., noting a message is sent; col. 3, lines 44-49, noting the device can alert via an audible message, beep, visual indication, or vibration).

Claim 20: Waytena discloses indicating a schedule conflict to a service receiver if said service receiver inputs an appointment with a service provider which would conflict with the schedule of a person other than said service receiver [i.e. if another has already scheduled the requested slot, indicate as much] (see Fig. 3, item 309, noting that if the ride is already scheduled by another person, a notice is sent).

Claim 21: Waytena discloses receiving and updating a service provider's personal schedule (see Fig. 7, item 721, noting that the ride has the provider-side queue schedule, as well as its own personal schedule, including items such as maintenance, staffing, etc).

Claim 22: Waytena discloses indicating a schedule conflict if a service provider inputs a business appointment schedule which may conflict with said service provider's personal schedule (see id., noting an unavailability notice is sent).

Claim 23: Waytena discloses a plurality of service receivers with coded access to each other's schedules (see Fig. 1, noting all rides share their schedules with 104 via computer communications).

Claim 24: Waytena discloses receiving scheduling input from a plurality of service providers and providing a service receiver with the ability to schedule an appointment with at least one of said plurality of service providers (see Fig. 1, item 102, noting that the communicator device allows for scheduling).

Claims 25, 27-29, and 31-43 are rejected for the same or similar reasons as claims 1-8, 12, 13, 16-18, and 20-24.

Claim 30: Waytena discloses that the service provider's personal schedule is not displayed at the remote locations (see Figs 5A-5E, noting the personal schedule of the ride is not displayed, only the queue schedule).

Claim 44: Waytena discloses inputting a schedule for a person other than the service receiver (see Fig. 2A, noting that the device is used to input a family's schedule, therefore, the inputter inputs someone else's schedule).

Claim Rejections - 35 USC § 103

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

19. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waytena as applied to claim 8 above.

Claims 9 and 10: Waytena discloses payment information, as described in claim 8. Waytena fails to explicitly disclose the payment type. However, the Examiner takes Official Notice that it is old and well known to use any well-known form of payment, such as: credit card, debit card, cash, check, wire, scrip, coupons, etc. The use of such payment types would be predictable because they would not alter the method, and would be using a known method of payment. Therefore, it would have been obvious to a person having ordinary skill in the art at the time of invention to use information regarding a credit card or another payment type for the purpose of handling payments in Waytena.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Keller et al. (US 2001/0053989) discloses an airline scheduling system.
- Iyengar et al. (US 6,360,205) discloses a trip scheduling system.
- Feldman (US 5,864,818) discloses a hotel scheduling system.
- Jung (US 4,775,936) discloses a travel overbooking (stand-by) system.

21. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Saindon whose telephone number is (571)270-3026. The examiner can normally be reached on M-F 7:30-5; alt. Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/wvs/

/Beth V. Boswell/
Supervisory Patent Examiner, Art Unit 3623